

2005 DRAFTING REQUEST

Bill

Received: **10/15/2004**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Blaine**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Public Assistance - med. assist.**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Blaine, BB0192 -

Topic:

BadgerCare pharmacy waiver

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 10/20/2004	jdye 10/29/2004		_____			State
/P1			pgreensl 10/29/2004	_____	sbasford 10/29/2004		State
/1	pkahler 11/30/2004	jdye 12/02/2004	pgreensl 12/02/2004	_____	mbarman 12/02/2004		State
/2	pkahler 01/11/2005	jdye 01/11/2005	rschluet 01/11/2005	_____	mbarman 01/11/2005		

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/?	pkahler 10/20/2004	jdyer 10/29/2004					State
/P1		1 12/2 jld	pgreensl 10/29/2004	12/2 P812	sbasford 10/29/2004		
FE Sent For:			12/2 p8	<END>			

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/?	pkahler	PI 10/29 jld	19/29 px	10/29 px/15			

FE Sent For:

<END>

2003-05 Budget Bill Statutory Language Drafting Request

- Topic: BadgerCare Pharmacy Waiver
- Tracking Code: (Assigned by Government Operations Team)
- SBO team: Health and Insurance
- SBO analyst: Robert Blaine
 - Phone: 267-7980
 - Email: robert.blaine@doa.state.wi.us
- Agency acronym: DHFS
- Agency number: 435

BB0192

541

BadgerCare Pharmacy Waiver

Current Language

Under s.49.665 (5)(ag) the Department may not establish cost sharing requirements above 5% of the BadgerCare recipient's income.

Under s.49.665 (5)(am) BadgerCare recipients are required to pay a co-pay of \$1 for generic drugs and \$3 for brand name drugs.

Proposed Change

Request non-statutory language that would direct the Department to seek a waiver from the Centers for Medicare and Medicaid Services to allow a three-tier pharmaceutical co-payment charge to BadgerCare recipients similar to the pharmaceutical co-payment requirements for State employees. The waiver would seek to allow for the co-payments in addition to the 5.0% premiums currently charged to BadgerCare recipients. In addition, require the Department to seek legislative changes to implement any approved waiver.

Effect of the Change

Submitting a waiver would allow the Department to determine if the Centers for Medicare and Medicaid Services would permit the Department to implement a three tiered co-payment structure for BadgerCare and determine if the co-payments could be in addition to the current 5% cost sharing requirement.

Rationale for the Change

Currently, the BadgerCare waiver approved by the Centers for Medicare and Medicaid Services (CMS) limits participant cost sharing to 5% of a recipient's income. Requiring the Department to submit a waiver would allow the Department to determine if CMS would approve implementing a three-tier pharmacy benefit for BadgerCare and increasing the cost sharing requirements above 5%.

If a waiver was granted the Department would be required to pursue the necessary statutory language changes to implement the waiver.

Desired Effective Date:

Agency:

Agency Contact:

Phone:

Upon Passage of the Budget Bill

DHFS

Curtis Cunningham

266-5362



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0541/7

PJK:...

LPS-check auto refs

DOA:.....Blaine, BB0192 - BadgerCare pharmacy waiver

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHFS administers the Badger Care (BadgerCare) health care program under which certain low-income children who do not reside with a parent and certain low-income families receive health care coverage. A child or family with health care coverage under BadgerCare and with an income that is equal to or greater than 150% of the federal poverty level is required to contribute a percentage, which may not exceed ~~the~~ 5 percent, of income to the cost of the health care according to a schedule established by DHFS by rule. Current law requires a child or family with coverage under BadgerCare to pay a copayment of \$1 for each prescription for a generic drug and a copayment of \$3 for each prescription for a brand name drug. This copayment is included in the total cost sharing that a child or family may be required to pay.

This bill directs DHFS to request a waiver from the secretary of the federal department of health and human services that would allow DHFS to implement a three-tiered prescription drug copayment requirement for persons with coverage under BadgerCare, and that would allow DHFS to impose this prescription drug copayment in addition to the ~~the~~ 5 percent of income cost sharing that is the maximum allowed under current law. The bill also requires DHFS to seek enactment of statutory language that implements the three-tiered prescription drug copayment requirement if the waiver is granted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 9121. Nonstatutory provisions; health and family services.**

2 (1) WAIVER FOR 3-TIERED PHARMACEUTICAL COPAYMENT FOR BADGER CARE
3 RECIPIENTS.

4 (a) The department of health and family services shall request a waiver from
5 the secretary of the federal department of health and human services to permit the
6 department of health and family services to do all of the following:

7 1. Implement a 3-tiered copayment requirement for prescription drugs
8 provided to persons with health care coverage under the Badger Care health care
9 program.

10 2. Require payment of the prescription drug copayment under subdivision 1.
11 in addition to the cost sharing that is limited under section 49.665 (5) (ag) of the
12 statutes to 5 percent of a covered person's or family's income.

13 (b) If the federal waiver under paragraph (a) is approved, the department of
14 health and family services shall seek enactment of statutory language to implement
15 the 3-tiered prescription drug copayment requirement.

16 (END)

Kahler, Pam

From: Cunningham, Curtis
Sent: Tuesday, November 30, 2004 10:38 AM
To: Blaine, Robert; Kahler, Pam
Cc: Dombrowicki, Angela; Fox, Michael
Subject: RE: FW: LRB Draft: 05-0541/P1 BadgerCare pharmacy waiver

Pam,
You are correct that the intent would be for mandatory co-payments for other services besides pharmacy. However, we also would want to have the authority to be able to increase the co-payments for pharmacy and to make them mandatory. Let me know if you have any questions. We would like the language to give us broad cost containment options.

Thanks,
Curtis

>>> Blaine, Robert 11/26/04 02:01PM >>>
Regarding this question and the one in your previous e-mail.

A definition of a "benchmark plan" is available on the CMS website:
"Benchmark coverage is coverage that is substantially equal to coverage under the Federal Employees Health Benefit Plan, the State employee plan or a health maintenance organization that has the largest, insured commercial non-Medicaid enrollment in the State."

<http://www.cms.hhs.gov/oralhealth/5.asp>

As to the question below, I'm cc'ing Curtis Cunningham so that he can clarify.

I think your assumption is correct.

Robert

-----Original Message-----

From: Kahler, Pam [mailto:Pam.Kahler@legis.state.wi.us]
Sent: Wednesday, November 24, 2004 11:26 AM
To: Blaine, Robert
Subject: RE: FW: LRB Draft: 05-0541/P1 BadgerCare pharmacy waiver

Sorry - another question on this one: by "requiring mandatory co-payments" I assume they mean for benefits other than prescription drugs, right?

-----Original Message-----

From: Blaine, Robert
Sent: Tuesday, November 23, 2004 1:35 PM
To: Kahler, Pam
Subject: FW: FW: LRB Draft: 05-0541/P1 BadgerCare pharmacy waiver

Pam -- please incorporate the suggestion provided by the department below. The intent is to broaden the department's authority to pursue cost containment in BadgerCare.

Thanks,

Robert

-----Original Message-----

From: Cunningham, Curtis

Sent: Tuesday, November 23, 2004 11:08 AM

To: Blaine, Robert

Cc: Dombrowicki, Angela; Fox, Michael; Bove, Fredi-Ellen; Cunningham, Curtis; Megna, Richard

Subject: Re: FW: LRB Draft: 05-0541/P1 BadgerCare pharmacy waiver

Robert,

We have had a discussion internally about this language. Based on peoples comments, the language should be revised to request broad authority to allow

us to explore all the various cost containment measures. The language would be similar to the following:

"The Department will request a waiver or waivers from the Federal government to implement cost savings measures in BadgerCare. These measures may include

but are not limited to, establishing a 3-tier prescription drug copayment requirement up to the maximum allowable by ETF for state employees, establishment of a benchmark plan, and requiring mandatory co-payments. If

a Federal Waiver is granted the Department shall seek enactment of statutory language to implement the approved cost sharing waivers"

Please let me know if you have any questions. I assume we will be able to review the revised language.

-Curtis

>>> Blaine, Robert 11/02/04 03:31PM >>>

Please review and respond with comments as soon as you can. I'm not sure why this one is a P1 -- there doesn't seem to be an accompanying drafter's note...

-----Original Message-----

From: Greenslet, Patty [mailto:Patty.Greenslet@legis.state.wi.us]

Sent: Friday, October 29, 2004 10:50 AM

To: Blaine, Robert

Cc: Johnston, James; Hanaman, Cathlene; Haugen, Caroline; Schaeffer, Carole

Subject: LRB Draft: 05-0541/P1 BadgerCare pharmacy waiver

Following is the PDF version of draft 05-0541/P1.

use
established
per RAC



State of Wisconsin
2005 - 2006 LEGISLATURE

SOON

LRB-0541/1

PJK:jld:pg

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DOA:.....Blaine, BB0192 - BadgerCare pharmacy waiver

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1

AN ACT *do not gen cat*; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHFS administers the Badger Care (BadgerCare) health care program under which certain low-income children who do not reside with a parent and certain low-income families receive health care coverage. A child or family with health care coverage under BadgerCare and with an income that is equal to or greater than 150 percent of the federal poverty level is required to contribute a percentage, which may not exceed 5 percent, of income to the cost of the health care according to a schedule established by DHFS by rule. Current law requires a child or family with coverage under BadgerCare to pay a copayment of \$1 for each prescription for a generic drug and a copayment of \$3 for each prescription for a brand name drug. This copayment is included in the total cost sharing that a child or family may be required to pay. ✓ *one or more waivers*

→ This bill directs DHFS to request ~~a waiver~~ *one or more waivers* from the secretary of the federal Department of Health and Human Services that would allow DHFS to implement a three-tiered prescription drug copayment requirement for persons with coverage under BadgerCare, and that would allow DHFS to impose this prescription drug copayment in addition to the 5 percent of income cost sharing that is the maximum allowed under current law. ✓ The bill also requires DHFS to seek enactment of statutory language that implements ~~the three-tiered prescription drug copayment requirement if the waiver is granted~~ *any cost-saving measures approved by the granting of a*

Insert 1-A ✓

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 9121. Nonstatutory provisions; health and family services.

(1) ~~WAIVER FOR 3-TIERED PHARMACEUTICAL COPAYMENT FOR~~ ^{COST-SAVING MEASURES UNDER THE} ~~BADGER CARE~~

~~RECIPIENTS~~ ^{HEALTH CARE PROGRAM}

(a) The department of health and family services shall request ^{one or more waivers} ~~waivers~~ from the secretary of the federal department of health and human services to permit the department of health and family services to ^{insert 2-6} do all of the following:

1. Implement a 3-tiered copayment requirement for prescription drugs provided to persons with health care coverage under the Badger Care health care program.

2. Require payment of the prescription drug copayment under subdivision 1. in addition to the cost sharing that is limited under section 49.665 (5) (ag) of the statutes to 5 percent of a covered child's or family's income.

(b) If ^a ~~the~~ federal waiver [✓] under paragraph (a) is approved, the department of health and family services shall seek enactment of statutory language to implement

~~the 3-tiered prescription drug copayment requirement.~~

(END)

^{NO} ~~#~~ cost-saving [✓] measures authorized under the waiver

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0541/lins
PJK:jld:pg

INSERT 1-A

no ft cost-saving measures under BadgerCare that may include, but are not limited to: 1) a three-tiered prescription drug copayment requirement that does not exceed the maximum copayment amount established by the Group Insurance Board for state employees; 2) a benchmark plan, which is described in federal regulations as health care coverage that is substantially equal to the health care coverage offered to federal or state employees or to a health insurance plan offered by a health maintenance organization that has the largest commercial enrollment in the state of persons who do not have coverage under the Medical Assistance (MA) program; and 3) mandatory copayments for benefits in addition to the copayments for prescription drugs.

(END OF INSERT 1-A)

INSERT 2-6

- 1 *with* implement cost-saving measures under the Badger Care health care program,
2 including, but not limited to, any of the following:
- 3 1 . Establishing a 3-tiered prescription drug copayment requirement that does
4 not exceed the maximum copayment amount established by the group insurance
5 board for state employees.
 - 6 2 . Establishing a benchmark plan, as described in 42 CFR 457.420.
 - 7 3. Establishing mandatory copayments for benefits in addition to the
8 copayments for prescription drug coverage.

(END OF INSERT 2-6)

Kahler, Pam

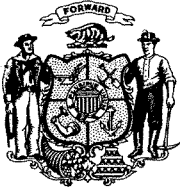
From: Blaine, Robert
Sent: Monday, January 10, 2005 4:38 PM
To: Kahler, Pam
Subject: LRB 05-0541 -- BadgerCare Pharmacy Waiver

Pam --

I would like to add another section to this draft. The purpose of this section (another nonstat) would be to direct the department to investigate alternatives to the "average wholesale price" pharmacy reimbursement methodology for brand name prescription drugs purchased/dispensed under Medical Assistance, BadgerCare and SeniorCare. The department should review / research different methodologies and submit a report with recommendations to the Department of Administration by June 30, 2006.

Thanks,
Robert Blaine

State Budget Office -- WI Dept. of Administration
608/267-7980
608/267-0372 (fax)
robert.blaine@doa.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0541/12

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1/11 or 1/12

DOA:.....Blaine, BB0192 - BadgerCare pharmacy waiver

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

D-note

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1 AN ACT ~~relating to~~; relating to: the budget.

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HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

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This bill directs DHFS to request one or more waivers from the secretary of the federal Department of Health and Human Services that would allow DHFS to implement cost-saving measures under BadgerCare that may include, but are not limited to: 1) a three-tiered prescription drug copayment requirement that does not exceed the maximum copayment amount established by the Group Insurance Board for state employees; 2) a benchmark plan, which is described in federal regulations as health care coverage that is substantially equal to the health care coverage offered

to federal or state employees or to a health insurance plan offered by a health maintenance organization that has the largest commercial enrollment in the state of persons who do not have coverage under the Medical Assistance (MA) program; and 3) mandatory copayments for benefits in addition to the copayments for prescription drugs. The bill also requires DHFS to seek enactment of statutory language that implements any cost-saving measures approved by the granting of a waiver.

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(a) The department of health and family services shall request one or more waivers from the secretary of the federal department of health and human services to permit the department of health and family services ^{to} implement cost-saving measures under the Badger Care health care program, including, but not limited to, any of the following:

1. Establishing a 3-tiered prescription drug copayment requirement that does not exceed the maximum copayment amount established by the group insurance board for state employees.

2. Establishing a benchmark plan, as described in 42 CFR 457.420.

3. Establishing mandatory copayments for benefits in addition to the copayments for prescription drug coverage.

- 1 (b) If a federal waiver under paragraph (a) is approved, the department of
2 health and family services shall seek enactment of statutory language to implement
3 cost-saving measures authorized under the waiver.

4

(END)



Insert 3-3 ✓

D-note

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0541/2ins
PJK:jld:pg

INSERT A

Also under current law, when an MA[✓] recipient or a person with coverage under BadgerCare[✓] or the program providing prescription drug assistance for elderly persons (SeniorCare)[✓] purchases a prescription drug, he or she pays a copayment and then DHFS reimburses the pharmacy an amount that is based on a national average wholesale price, plus a percentage or amount for a dispensing fee. Under the bill, DHFS[✓] must investigate alternatives to using the average wholesale price pharmacy reimbursement methodology for brand name drugs purchased or dispensed under MA, BadgerCare, and SeniorCare,[✓] and must submit a report with its findings, conclusions, and recommendations to DOA[✓] no later than June 30, 2006.

(END OF INSERT A)

INSERT 3-3

CS
METHODOLOGY

1 [#]₉ PHARMACY REIMBURSEMENT[✓] INVESTIGATION. The department of health and
2 family services shall investigate alternatives to using the average wholesale price
3 methodology for pharmacy reimbursement for brand name prescription drugs that
4 are purchased by or dispensed to Medical Assistance[✓] recipients, persons who receive
5 health care coverage under the Badger Care health care program,[✓] and participants
6 in the program for prescription drug assistance for elderly persons under section
7 49.688[✓] of the statutes. The department's investigation shall include review and
8 research of different methodologies. No later than June 30, 2006, the department
9 of health and family services shall submit to the[✓] department of administration a
10 report with its findings, conclusions, and recommendations on the various
11 methodologies investigated.

(END OF INSERT 3-3)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0541/2dn
PJK:jld:pg

Robert:

In this redraft, I removed the phrase "but not limited to" after "including" in the first nonstatutory provision, consistent with our recommended drafting practices. The removal of the phrase does not mean, however, that the three measures listed are the only measures that DHFS may request to implement. They are just some examples.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0541/2dn
PJK:jld:rs

January 11, 2005

Robert:

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Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DOA:.....Blaine, BB0192 – BadgerCare pharmacy waiver

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This bill directs DHFS to request one or more waivers from the secretary of the federal Department of Health and Human Services that would allow DHFS to implement cost-saving measures under BadgerCare that may include: 1) a three-tiered prescription drug copayment requirement that does not exceed the maximum copayment amount established by the Group Insurance Board for state employees; 2) a benchmark plan, which is described in federal regulations as health care coverage that is substantially equal to the health care coverage offered to federal

or state employees or to a health insurance plan offered by a health maintenance organization that has the largest commercial enrollment in the state of persons who do not have coverage under the Medical Assistance (MA) program; and 3) mandatory copayments for benefits in addition to the copayments for prescription drugs. The bill requires DHFS to seek enactment of statutory language that implements any cost-saving measures approved by the granting of a waiver.

Also under current law, when an MA recipient or a person with coverage under BadgerCare or the program providing prescription drug assistance for elderly persons (SeniorCare) purchases a prescription drug, he or she pays a copayment and then DHFS reimburses the pharmacy an amount that is based on a national average wholesale price, plus a percentage or amount for a dispensing fee. Under the bill, DHFS must investigate alternatives to using the average wholesale price pharmacy reimbursement methodology for brand name drugs purchased or dispensed under MA, BadgerCare, and SeniorCare, and must submit a report with its findings, conclusions, and recommendations to DOA no later than June 30, 2006.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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(a) The department of health and family services shall request one or more waivers from the secretary of the federal department of health and human services to permit the department of health and family services to implement cost-saving measures under the Badger Care health care program, including any of the following:

1. Establishing a 3-tiered prescription drug copayment requirement that does not exceed the maximum copayment amount established by the group insurance board for state employees.

2. Establishing a benchmark plan, as described in 42 CFR 457.420.

3. Establishing mandatory copayments for benefits in addition to the copayments for prescription drug coverage.

(b) If a federal waiver under paragraph (a) is approved, the department of health and family services shall seek enactment of statutory language to implement cost-saving measures authorized under the waiver.

(2) PHARMACY REIMBURSEMENT METHODOLOGY INVESTIGATION. The department of health and family services shall investigate alternatives to using the average wholesale price methodology for pharmacy reimbursement for brand name prescription drugs that are purchased by or dispensed to Medical Assistance recipients, persons who receive health care coverage under the Badger Care health care program, and participants in the program for prescription drug assistance for elderly persons under section 49.688 of the statutes. The department's investigation shall include review and research of different methodologies. No later than June 30, 2006, the department of health and family services shall submit to the department of administration a report with its findings, conclusions, and recommendations on the various methodologies investigated.

(END)